

## SECTION II—REMARKS

Applicants thank the Examiner for a thorough review, and respectfully request reconsideration of the above referenced patent application for the following reasons:

### **Claims 34-37, 42-43, 46-52, 54, and 57-74 rejected for non-statutory double patenting**

The Office Action rejected claims 34-37, 42-43, 46-52, 54, and 57-74 under non-statutory double patenting, stating that the claims are “unpatentable over claims 12-33” of U.S. Patent Number 6,618,388,” to Yip et al. (“Yip”).

Applicants respectfully submit concurrently herewith a terminal disclaimer to overcome the non-statutory double patenting rejection. Accordingly, Applicants respectfully request the Examiner to withdraw the rejection to claims 34-37, 42-43, 46-52, 54, and 57-74.

### **Claims 34-41 rejected under 35 U.S.C. § 101**

The Office Action rejected claims 34-41 under 35 U.S.C. § 101 because the claimed invention is directed toward a “data structure,” which the Office Action states is “descriptive material and is not statutory.” The Examiner recommended replacing the phrase, “A data structure in a machine-readable medium” with the phrase, “[A] computer-readable medium encoded with computer executable instructions ... .”

In accordance with the Examiner’s recommendation, Applicants have amended independent claim 34 to recite, “[a] **machine-readable medium** encoded with computer executable instructions to represent a data structure ... .” Because the claim is now directed toward a “machine-readable medium,” rather than a “data structure,” Applicants respectfully

submit that the rejection of independent claim 34 is rendered moot. Moreover, a “machine-readable medium,” as claimed by Applicants, falls within the four statutory categories set forth under 35 U.S.C. § 101, and thus is directed toward patentable subject matter and is in condition for allowance. Dependent claims 35-41 have been amended in a similar manner.

Accordingly, Applicants respectfully request the Examiner to withdraw the rejection to claims 34-41.

**Claims 34, 41, 42, 48 and 64 rejected under 35 U.S.C. § 102(e)**

The Office Action rejected claims 34, 41, 42, 48 and 64 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2001/0005381 to Sugiyama (“Sugiyama”). Applicants respectfully disagree. For example, Independent claim 34 as amended herein recites in pertinent part:

... a Virtual Metropolitan Area Network (“VMAN”) identifier field to specify a VMAN associated with an originating domain for the packet; and

a **VMAN data type field** comprising information to **interpret the contents of the VMAN identifier field.**

Applicants teach “a **VMAN data type field** comprising information to **interpret** the contents of the VMAN identifier field” at page 10, line 19 through page 11, line 4 of Applicants’ original disclosure. For example:

Fig. 2c illustrates an embodiment of the VMAN tagged format of the previously described VMAN tagged frames 145 and 150, in further detail. In addition to the ... VLAN ID 206 as already described, **the VMAN tagged frame format includes an additional 4 bytes of data in type data field 207 and VMAN tag VMAN ID 208.** In one embodiment the type field 20[7] is a 2-byte hexadecimal number, e.g. “H8181,” **that defines the type of tag** being used in the data packet, in this case the VMAN tag VMAN ID 208. **The type field 207 provides the identifying information to the switch that is necessary to interpret the contents of the**

**VMAN tag VMAN ID 208.** In the illustrated embodiment, the VMAN tag VMAN ID 208 is also a 2-byte field, and may also be formatted as a hexadecimal number that identifies the VMAN to which the data packet belongs.

The Office Action states that Sugiyama discloses “a data structure ... in a memory ... comprising field 54 **Protocol type** ... and field 51 **VPN-ID.**” The Office Action references Figure 5 of Sugiyama which illustrates a table having seven columns and several rows, the first column having the header “VPN-ID” and the fourth column having the header, “**PROTOCOL TYPE.**” The “VPN-ID” column is above rows each having the value “1” and the “PROTOCOL TYPE” header is above rows having entries of either, “6(TCP)” or “17(UDP)” as possible values. The corresponding description of Figure 5 at paragraph [0036] describes the various columns stating in pertinent part:

... As shown in FIG. 5, for an input VC number 53 from a user terminal recognized at the ATM edge node switching equipment 32, a **VPN-ID (identifier of [a] virtual private network) 51** in which a user is distinguished at the core network and a QOS type 52 that sets a communication service level are set. ... The QOS information 58 is information combin[ing] a **protocol type 54 of the TCP/UDP**, a destination service port number 55, and a source address service port number 56, and further provides a code point 57.

Thus, Sugiyama discloses a “VPN-ID” as an “identifier of [a] virtual private network” and further discloses “QOS information” which is the combination of the “protocol type 54 of the TCP/UDP” and several other data fields. However, Sugiyama does not disclose a “**VMAN data type field** comprising information to **interpret the contents** of the VMAN identifier field,” as Applicants recite in amended claim 34. In particular, the “protocol type” field of Sugiyama which identifies either a “6(TCP)” or “17(UDP)” value as part of a “QOS information” is not the same as the “VMAN data type field comprising information to **interpret contents of the VMAN identifier field.**” Sugiyama does not discuss any interrelationship between the “protocol type”

field, which the Office Action equates to Applicants' "VMAN data type field" and the "VPN-ID" field which the Office Action equates to Applicants' "VMAN identifier field." Specifically, the "protocol type" field of Sugiyama does not provide "information to interpret the contents" of Sugiyama's "VPN-ID" field, and thus cannot anticipate the limitation claimed by Applicants, a "VMAN data type field comprising information to interpret contents of the VMAN identifier field."

Because Sugiyama fails to disclose each and every element in as complete detail as Applicants recite in independent claim 34 amended herein, Applicants respectfully submit that claim 34 is not anticipated by the reference and is in condition for allowance. Independent claims 42 and 64 recite similar limitations. Dependent claims 41 and 48 directly or indirectly incorporate all the limitations of the independent base claims upon which they depend, and thus, for at least the reasons stated above are not anticipated by the reference and are in condition for allowance.

Accordingly, Applicants respectfully request the Examiner to withdraw the rejection of claims 34, 41, 42, 48 and 64.

**Claims 57-59 and 69 rejected under 35 U.S.C. § 102(e)**

The Office Action rejected claims 57-59 and 69 under 35 U.S.C. § 102(e) as being anticipated by U.S. 6,771,673 to Baum et al. ("Baum"). Applicants respectfully disagree. For example, Independent claim 57 as amended herein recites in pertinent part:

... means for tagging each data packet with a Virtual Metropolitan Area Network ("VMAN") identifier tag to specify a VMAN associated with an originating domain for the data packet;

means for tagging each data packet with a **VMAN data type tag comprising information to interpret the contents of the VMAN identifier tag** ... .

The Office Action states that Baum discloses “forwarding a packet in accordance [with the] fig. 13 data structure, [wherein] the 802.1Q tag is **associated with VPN-ID**.” The Office Action equates the “VPN-ID” of Baum to the “VMAN identifier tag” claimed by Applicants. The Office Action relies on Baum at Column 16, lines “66+” and Figure 13. Baum, at Figure 13, does disclose a “VPN-ID” at element 1312, described in the Figure with the label, “TO IDENTIFY CUSTOMER SOURCING OR RECEIVING THE TRAFFIC.” At column 17, lines 13-14, Baum describes the VPN-ID as, “basic context information including customer identifying information.”

Accordingly, Baum discloses a “VPN-ID” capable of identifying the “customer sourcing or receiving the traffic.” However, Baum is silent with respect to a “**VMAN data type tag** comprising information to **interpret the contents** of the VMAN identifier tag.” In particular, Baum fails to disclose any interrelationship between the “VPN-ID,” which the Office Action equates to Applicants’ “VMAN identifier tag” and another field, such as Applicants’ “VMAN data type tag,” that contains “**information to interpret the contents**” of Applicants’ “VMAN identifier tag.” Thus, even if, for the sake of argument, Baum’s “VPN-ID” is equivalent to Applicants’ “VMAN identifier tag,” Baum still cannot anticipate the limitation as Baum fails to disclose the “**VMAN data type tag** comprising information to **interpret the contents** of the VMAN identifier tag.”

Because Baum fails to disclose each and every element in as complete detail as Applicants recite in independent claim 57 as amended herein, Applicants respectfully submit that claim 57 is not anticipated by the reference and is in condition for allowance. Independent claim 69 recites similar limitations. Dependent claims 58-59 directly or indirectly incorporate all the

limitations of independent base claim 57 upon which they depend, and thus, for at least the reasons stated above, dependent claims 58-59 are not anticipated by the reference and are in condition for allowance.

Accordingly, Applicants respectfully request the Examiner to withdraw the rejection of claims 57-59 and 69.

**Claims 35-40, 43-47, 49-56, 60-63, 65-68, and 70-74 rejected under 35 U.S.C. § 103(a)**

The Office Action rejected claims 35-40, 43-47, 49-56, 60-63, 65-68, and 70-74 under 35 U.S.C. § 103(a) as being unpatentable over various combinations of Sugiyama, Baum, and U.S. Patent Application Publication No. 2003/0123448 to Chang (“Chang”). In particular, the Office Action rejected claim 35 as being unpatentable over Sugiyama, claims 36-40, 43-47, 49-56 and 65-68 as being unpatentable over Sugiyama in view Chang, and claims 60-63 and 70-74 as being unpatentable over Baum in view of Chang.

**Independent claim 49:**

As discussed above with respect to independent claim 34 rejected under 35 U.S.C. § 102(e), Sugiyama fails to disclose “a VMAN data type field comprising information to interpret the contents of the VMAN identifier field.” Independent claim 49, as amended herein, recites a similar limitation, specifically, “a **VMAN data type tag** comprising information to interpret the contents of the **VMAN identifier tag**.” Chang fails to cure the deficiency of Sugiyama as it too fails to disclose the “VMAN data type tag comprising information to interpret the contents of the VMAN identifier tag,” as Applicants claim.

Because Sugiyama and Chang, whether considered alone or in combination, fail to disclose each and every element in as complete detail as Applicants recite in independent claim

49 as amended herein, Applicants respectfully submit that claim 49 is patentable over the references and in condition for allowance.

Dependent claims 35-40, 43-47, 50-56, 60-63, 65-68, and 70-74:

Dependent claims 35-40, 43-47, 50-56, 60-63, 65-68, and 70-74 each directly or indirectly incorporate the limitations of the independent base claims upon which they depend. Sugiyama, Baum, and Chang, whether considered alone or in any combination, fail to cure the deficiencies discussed above with respect to the rejection of independent base claims 34, 42, 49, 47, 64, and 69 rejected under 35 U.S.C. §§ 102 and 103, as the references do not disclose “a **VMAN data type field** comprising information to **interpret the contents of the VMAN identifier field**,” as Applicants recite in independent claim 34, or similar limitations as claimed by Applicants in independent claims 42, 49, 47, 64, and 69.

Because Sugiyama, Baum, and Chang, whether considered alone or in any combination, fail to disclose each and every limitation as Applicants recite in dependent claims 35-40, 43-47, 50-56, 60-63, 65-68, and 70-74, Applicants respectfully submit that the dependent claims are patentable over the references and in condition for allowance.

Accordingly, Applicants respectfully request the Examiner to withdraw the rejection to claims 35-40, 43-47, 49-56, 60-63, 65-68, and 70-74.

## CONCLUSION

Given the above amendments and accompanying remarks, all claims pending in the application are in condition for allowance. If the undersigned attorney has overlooked subject matter in any of the cited references that is relevant to allowance of the claims, the Examiner is requested to specifically point out where such subject matter may be found. Further, if there are any informalities or questions that can be addressed via telephone, the Examiner is encouraged to contact the undersigned attorney at (503) 439-8778.

### **Charge Deposit Account**

Please charge our Deposit Account No. 02-2666 for any additional fee(s) that may be due in this matter, and please credit the same deposit account for any overpayment.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

/Gregory D. Caldwell/

Gregory D. Caldwell  
Registration No. 39,926  
Attorney for Applicants

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Blakely, Sokoloff, Taylor & Zafman LLP  
1279 Oakmead Parkway  
Sunnyvale, CA 94085-4040  
Telephone: (503) 439-8778  
Facsimile: (503) 439-6073